



Date: February 1, 1990

Case No. 90-TLC-6

In the Matter of

MOUNTAIN PLAINS AGRICULTURAL SERVICE
Employer

Before: JEFFREY TURECK
Administrative Law Judge

DECISION AND ORDER

The above-captioned employer requested expedited administrative review¹ under 20 C.F.R. §655.112 from the December 7, 1989 denial by Regional Certifying Officer ("CO") Ruth A. Kapetan of a temporary labor certification for three sheepherders to be employed from February 1, 1990 to January 31, 1991. The case file was received by this Office on December 20, 1989. Under §655.112(a)(2), the Administrative Law Judge is required to issue his or her decision within five days of receipt of the case file. However, Employer's Executive Director moved for a month's delay to consult legal counsel, and without objection from the CO, the motion was granted. But Employer took no action during this period. Moreover, contrary to Employer's previous representation, no additional argument was submitted.

The CO denied certification stating that Employer's application was unacceptable. The central reason for so holding was that Employer improperly sought certification under special provisions applicable to sheepherder jobs [see 20 C.F.R. §655.93(c)]. The CO found that the duties of these jobs exceeded those for a sheepherder set out in the Dictionary of Occupational Titles (see AF 5-6), and accordingly the special provisions for sheepherders are not applicable to these applications. The CO's position is supported by the record, for the application (see p. 14 of the Administrative File) lists a wide variety of duties beyond those listed in §410.687-002 of the Dictionary of Occupational Titles for a sheepherder.

¹ Employer's petition requested "administrative judicial review and/or de novo hearing" This Office telephoned Oralia G. Hercado, Employer's Executive Director, to clarify this ambiguity, and was informed that Employer wanted a decision on the record, not a de novo hearing.

Accordingly, I find that the CO's denial of temporary labor certification is supported by the record, and it is AFFIRMED.

JEFFREY TURECK
Administrative Law Judge